

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-1117

To be argued by
LAWRENCE B. PEDOWITZ

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1117

UNITED STATES OF AMERICA,

Appellee,

—v.—

PEDRO LUIS ANSIN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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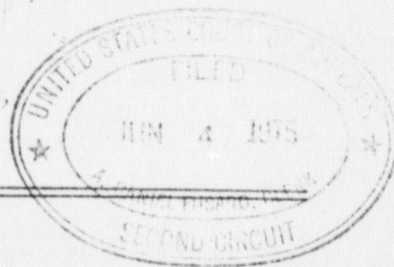




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PEDRO LUIS ANSIN,

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Pedro Luis Ansin appeals from a judgment of conviction entered on March 4, 1975 in the United States District Court for the Southern District of New York, after a five day trial before the Honorable Robert J. Ward, United States District Judge, and a jury.

Indictment 74 Cr. 224, filed on March 4, 1974, charged defendants Pedro Luis Ansin, Jose Jauregui, a/k/a Aramis Fernandez and Jose Torres, Mario Garcia, a/k/a Mamua, Carmella Jinokaur, Charles Schreier and Pedro Canales in Count One with conspiring to violate the Federal narcotics laws. Title 21, United States Code, Section 846. Count Two charged Ansin and Garcia with distributing 25.21 grams of cocaine on November 13, 1973. Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and

Title 18, United States Code, Section 2. Count Three charged Ansin and Jauregui with distributing 116.5 grams of cocaine on November 26, 1973. Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A). Count Four charged Canales with distributing 0.25 grams of cocaine on December 7, 1973. Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).

Ansin's trial commenced on December 10, 1974.* On December 17, 1974 the jury found Ansin guilty on Counts One, Two and Three of the Indictment.

On March 4, 1975, Ansin was sentenced to two years imprisonment on Count One, to be followed by three years special parole. Imposition of Ansin's sentence on Counts Two and Three was suspended, and he was placed on probation for five year concurrent terms on each count, to be served consecutively to his term of imprisonment and concurrently with his special parole term.

Ansin is free on bail pending this appeal.

Statement of Facts

The Government's Case

On November 13, 1973, at 5:00 P.M., Special Agent Nicholas Alleva of the Drug Enforcement Administration, acting in an undercover capacity, arrived at Marchel's Diner in Queens and was introduced by a confidential informant to Charles Schreier and his girlfriend, Carol. Agent Alleva, who had been told Schreier would sell him an ounce of

* Prior to Ansin's trial Mario Garcia, a/k/a Mamua and Pedro Canales pleaded guilty. Carmella Jinokaur and Charles Schreier are fugitives. An order of *nolle prosequi* was entered as to Jauregui after he was convicted on related narcotics charges contained in Indictment 74 Cr. 449.

cocaine, asked Schreier for the package. Schreier replied that he would have to call "Pedro" in order to get the package and said he wanted to see Alleva's money before he called. Agent Alleva then showed Schreier \$900. (Tr. 33-35, 282).

After a number of unsuccessful attempts to reach Pedro by phone, Schreier returned to the table at which the group was sitting and said that Pedro had told him the cocaine was on its way from New Jersey and that it would be necessary to call Pedro back. Agent Alleva then left the restaurant with Schreier, Carol and the informant and dropped Carol off at her home. Agent Alleva then stopped the car so that Schreier could make another call to Pedro. When Schreier returned to the car, he said that the deal was all set, but that they would first have to pick up Pedro at his home. Schreier directed Agent Alleva to 194th Lane and 64th Circle in Fresh Meadows, Queens, where the appellant Pedro Ansin entered Alleva's car. (Tr. 35-37, 283-84).

Once inside the car, Ansin told Agent Alleva that he was not the source of the cocaine but would introduce Alleva to the source. Ansin directed Alleva to 135th St. and Broadway in Manhattan, where Ansin got out of the car and met with two men who had been waiting in a gypsy taxicab.* Ansin then returned to Agent Alleva's vehicle with one of the two men, Mario Garcia, who was introduced to Alleva as "Mamua." (Tr. 37-38, 284-85).

Garcia told Alleva to drive to 125th St. and Broadway. When they arrived, Agent Alleva, Ansin, Garcia, Schreier, and the informant entered El Reloj Bar and ordered drinks. Shortly thereafter Garcia went into the bathroom, returned to the bar, spoke briefly to Ansin in Spanish and handed Ansin a clear plastic package containing white powder.

* The taxicab was registered to codefendant Jose Jauregui. (Tr. 288-89).

Ansin then turned to Alleva and told him to follow him into the bathroom. Inside the bathroom, Ansin sold Alleva a package containing 25.21 grams of cocaine for \$900. After the sale, Alleva drove back to Broadway and 135th St. where Garcia and Ansin got out of the car and entered the gypsy cab. Alleva then took Schreier to Queens. (Tr. 39-44, 285, 554; GX 1A).

On November 19, 1973, Agent Alleva, after calling Ansin at a phone number Ansin had provided on November 13th, picked Ansin up near his home at about 11:30 P.M. They drove to Lum's Restaurant on Northern Boulevard in Flushing. During the ride, Alleva complained about the quality of the cocaine he had received on the 13th, and Ansin assured him that his people would supply better quality narcotics in the future. Upon arriving at the restaurant, Agent Alleva and Ansin went to the bar. There, Ansin handed Alleva a sample of cocaine, saying any cocaine sold in the future would be of a similar quality. Ansin also said the price for an eighth kilogram of cocaine would be \$3,300 and for a quarter kilogram \$6,000 to \$6,600. Ansin and Alleva then left the restaurant at 1 A.M. on November 20th, and Alleva returned Ansin to his home. (Tr. 47-48, 290).

The next evening, at approximately 9:30 P.M., Agent Alleva, who had arranged with Ansin to purchase an eighth of a kilogram of cocaine that night, picked up Ansin near his home. Ansin told Alleva that he would soon introduce him to a ring of people who were in an apartment numbered 6K-1 and directed Alleva to drive to an apartment building at 601 W. 110th St. in Manhattan. (Tr. 51-53, 294).

Upon arriving at the building, Ansin entered and returned to say "Mamua" (Mario Garcia) was upstairs and that the cocaine would arrive by 11:00 P.M. At approximately 11:00 P.M. Ansin reentered the building, instructing

Alleva to wait outside. When Ansin had not returned by 11:30, Alleva entered the building and had a desk clerk ring room 6K-1. Ansin instructed Alleva to be patient. Five minutes passed, and Alleva again called. Ansin told Alleva to wait downstairs. Minutes later Ansin came downstairs and told Alleva that the people upstairs wanted to meet him. Alleva then went outside to the trunk of his car to get the \$3,300 he had brought with him to purchase the cocaine. He then followed Ansin upstairs and entered the apartment. (Tr. 53-56, 295).

Present in the apartment were Mario Garcia, Carmella Jinokaur and two women. In Ansin's presence, Jinokaur explained to Agent Alleva that the supplier of the cocaine refused to do business that night because there were too many strange cars in the area. However, Jinokaur assured Alleva that the supplier was capable of supplying multi-kilo quantities of cocaine, and Ansin joined in Jinokaur's assurances. (Tr. 56-60).

Ansin and Agent Alleva then left the apartment and went to a restaurant about one block away. Ansin made a phone call and then told Alleva that the deal was off for that evening. Alleva, after arranging to call Ansin on November 25th, dropped him off at his home. (Tr. 60-61).

Pursuant to their prior arrangement, Agent Alleva phoned Ansin on November 25th. Ansin told Alleva that he would sell him an eighth of a kilogram of cocaine the following evening at the Bayona Restaurant in Manhattan. (Tr. 61-63).

On November 26, 1973, Ansin entered the Bayona Restaurant at 10:15 P.M. Fifteen minutes later, Agent Alleva arrived and met with Ansin. Ansin told Alleva that he did not yet have the cocaine, but that he was scheduled to meet his connection in just a few minutes outside the restaurant. Ansin then walked out of the

restaurant and was observed looking up and down the street. Ansin returned to the restaurant, told Alleva that the supplier had not yet arrived and suggested that they have dinner while awaiting his arrival. After ordering dinner, Ansin told Agent Alleva that he was going out to see if his man had arrived. (Tr. 63-65, 296-97).

Ansin then met outside the restaurant with Jose Jauregui who had been seen earlier moving in and out of doorways in the nearby area. Jauregui and Ansin got into Ansin's car and drove to W. 12th St. between Hudson and 8th Avenues, where they double-parked next to a gypsy taxicab which was registered to Jauregui. The two men were seen walking to the trunk of the taxicab and then getting back into Ansin's vehicle. Ansin was then dropped off at the restaurant and Jauregui remained outside in Ansin's car. (Tr. 65, 297-99).

Ansin then reentered the restaurant and handed Alleva a package containing 116.5 grams of cocaine, stating that the package would take one and a half "hits." Alleva took the package to the men's room, field tested it, and returned to the table. He told Ansin that he should tell his man that the package was not worth the agreed to price of \$2,800, because it was only 25% cocaine. (Tr. 66-74; GX 3a).

Ansin then again left the Restaurant and got into the car with Jauregui. Minutes later he returned to the restaurant and told Alleva that his man said the price remained \$2,800 and that he should not complain because this package was of a better quality than the package Alleva had previously purchased from "Mamua". Agent Alleva then paid Ansin \$2,800 and saw Ansin remove three or four \$100 bills from the flashroll as Ansin left the restaurant to rejoin Jauregui. (Tr. 74-75).

Ansin then got back in the car with Jauregui and drove back to 12th St., where Jauregui's gypsy cab was parked. There, the two men parked Ansin's car and got into the

gypsy cab. Jauregui then drove Ansin back to the Restaurant where Ansin got out, rejoined Alleva and finished his dinner. Jauregui then drove his cab to 601 W. 110th St. (Tr. 75, 301).

On December 3, 1973, Agent Alleva met Ansin outside a Bloomingdale's department store in Queens, where Ansin handed him another sample of cocaine. Ansin then told Alleva that he was on his way to meet "his man", and Alleva asked if he could give him a ride. Ansin agreed, and the two men drove to upper Broadway in Manhattan. There, Ansin met alone with Jose Jauregui in a snack bar and returned to tell Alleva, who had remained across the street from the snack bar, that Jauregui had agreed to meet them at a Steak and Brew Restaurant on Broadway and 68th St. (Tr. 78-81, 303; GX 4a).

Agent Alleva and Ansin then drove downtown and entered the Steak and Brew Restaurant. There, Alleva was introduced to Jauregui and had a conversation with him, in Ansin's presence, in which Jauregui said he did not presently have a supply of cocaine but would have Ansin contact Alleva as soon as he acquired one. Ansin and Agent Alleva then got back into Alleva's car and made arrangements to meet at La Bilbaina Restaurant at 218 W. 14th St. in Manhattan on December 7th. Ansin explained that he would be acting as the maitre'd at the restaurant that night and would introduce Alleva to a number of cocaine dealers who would be present. (Tr. 84-89).

On December 7, 1973, Agent Alleva went to La Bilbaina Restaurant at approximately 11:30 P.M. Ansin seated him at a table with Carmella Jinokaur and Mario Garcia. Agent Alleva asked Jinokaur if she could supply him with good quality cocaine, and she asked him to meet her in the men's room.* In the men's room, Jinokaur

* Jinokaur was dressed as a man. Her gender is uncertain. (Tr. 93).

offered Alleva a sample of cocaine for his own use, which Alleva declined. Jinokaur and Alleva then returned to the table, and Jinokaur had a brief discussion with Garcia in Spanish. Garcia then made a phone call, returned to the table and said his "man" would be there in half an hour. (Tr. 92-96).

At approximately 12:25 A.M., Pedro Canales and a woman came into the restaurant and approached Alleva's table. Alleva was introduced to Canales as "Kenny". Ansin then told Agent Alleva that "Kenny's" real name was Canales and that he was a good source for cocaine. Alleva then asked Canales for a sample of cocaine; Canales turned to Jinokaur and she said, "It is okay. Pedro and I have been dealing with him for a long time." Canales handed Alleva an aluminum packet, instructing him to take it to the bathroom to see what he thought of it. Inside the bathroom, Alleva scooped up some of the cocaine contained in the packet and placed it into a folded dollar bill. Alleva then returned to the table and told Canales the quality of the cocaine was not good, and Canales replied that he could do better in the future. (Tr. 96-103, 305-06; GX 5a).

At approximately 8:30 P.M. on February 20, 1974, Ansin was arrested outside his home in Queens. After being twice advised of his constitutional rights, he gave a statement on February 21, 1973 denying that he had ever sold cocaine, but reciting in detail many of the facts underlying the November 13th and November 26th sales. (Tr. 475-98).

The Defense Case

Ansin called eight character witnesses who testified to his reputation for honesty and integrity. (Tr. 675-97).

Dr. Charles J. Umberger was also called by the defense, and he testified that, based on the chemical tests

which the Government chemists had testified that they had performed, neither he nor the chemists could tell if the Government's narcotics exhibits contained cocaine. (Tr. 704-05).

On cross-examination, however, Doctor Umberger admitted that he did not know if the Government chemists had performed chemical tests other than those they were questioned about on cross-examination by defense counsel. He went on to state that he did not know if the chemists had performed infra-red spectroscopy but that, if they had, it would have been "highly commendable," because infra-red spectroscopy was the best, surest and cleanest test for cocaine. (Tr. 797-98). He also admitted that he had never suggested to defense counsel that he independently examine the Government's exhibits. (Tr. 799).

The Government's Rebuttal Case

Stanley Blasof, a Drug Enforcement Administration chemist, testified that he had not been asked by defense counsel about all of the tests he had performed on the Government exhibits he had analyzed. In addition to other tests he had not been asked about, he testified that he had performed infra-red spectroscopy on each of the exhibits he had examined. (Tr. 820-21).

Dr. John Sawinski testified that, in addition to the tests he had been asked about by defense counsel, he had performed thin layer chromatography, ultra-violet spectroscopy and gas chromatography on the Government exhibit which he had analyzed. (Tr. 845).

ARGUMENT

POINT I

Judge Ward did not abuse his discretion in refusing to require the Government, under the circumstances of this case, to divulge the identity of the informant.

Ansin asserts that Judge Ward erred in not requiring the Government to disclose the identity of the informant. Appellant, for the first time, argues in this Court that the informant alone was in the position of "conceivably" being able to refute Agent Alleva's testimony about the events that transpired on November 13, 1973 and that therefore the informant's identity should have been revealed. This argument is devoid of merit.

The courts have long recognized a governmental privilege to withhold from disclosure the identity of persons who furnish information about violations of law. See *Scher v. United States*, 305 U.S. 251, 254 (1938); *In re Quarles*, 158 U.S. 532 (1895); *Vogel v. Gruaz*, 110 U.S. 311, 316 (1884); 8 Wigmore, Evidence § 2374 (McNaughton Rev. 1961). This privilege encourages citizens to furnish information concerning the commission of crimes by preserving their anonymity and also enables the Government to continue to utilize professional informants whose usefulness would come to an end if their dual role was publicly revealed. See *Roviaro v. United States*, 353 U.S. 53, 59 (1957).

However, the privilege is not without its limits. In *Roviaro v. United States*, *supra*, 353 U.S. at 60-61, the Supreme Court stated that:

"[w]here the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential

to a fair determination of a cause, the privilege must give way."

In *United States v. Soles*, 482 F.2d 105, 109 (2d Cir.), *cert. denied*, 414 U.S. 1027 (1973), this Court, observing that the Supreme Court had been careful to qualify the standard it set forth in *Roviaro*,* stated:

"Both reason and context demonstrate, however, that these words are not to be read with extreme literalness. Determining whether the testimony of an informer is likely to be 'relevant and helpful' is a task best left to the trial court's informed discretion."

Under the circumstances of this case, Judge Ward, after carefully considering the justifications advanced by the defense for compelling disclosure, did not abuse his discretion in refusing to require the Government to reveal the informant's identity.

First, the arguments put forth by the defense below provided the Trial Judge with no reason to believe that revealing the identity of the informant would be "relevant and helpful" to the defense. The defense advanced three arguments: (1) that learning the identity of the informant would permit counsel "to indicate to the jury that this entire case is built on the substantive unilateral secret undercover type of testimony that may be repugnant to one or two of them"; (2) that, if the informer testified, some question might be raised about the truthfulness of what he

* The Supreme Court stated:

"We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors." 353 U.S. at 62.

had told Agent Alleva at the very outset of this investigation; and (3) that the testimony of the informant would be material if an entrapment defense were interposed. (Tr. 114-16).

Judge Ward properly found these three arguments entirely unpersuasive in the context of this case.* The first argument was based a *non sequitur*. Assuming that the defense could legitimately seek to appeal to certain jurors distaste for undercover law enforcement—a highly questionable assumption—**, such an appeal was not prevented by withholding the name of the informant. Counsel was permitted to question government witnesses about the fact that there was an informant in this case, and the defense made ample use of this opportunity. The second argument was equally groundless. Whatever information from the informant precipitated Alleva's arrival at Marchel's Diner on November 13, 1973 had not the slightest relevance to any issue at the trial, and Judge Ward so found. (Tr. 115-17). Lastly, the contention that the identity of the informant would be relevant if an entrapment defense were raised was a specious argument. There was never even a question at the trial that the informant had met Ansin before November 13, 1973 or that on that date he negotiated with him. Entrapment was at no time asserted as a defense.

Since Ansin failed to articulate a single relevant justification for disclosure of the identity of the informant, the

* Judge Ward had initially been under the impression that the informant's identity had been disclosed in a related case (Tr. 110), and while under this mistaken impression, he ruled that disclosure would be required. See *Roviaro v. United States*, 353 U.S. 53, 60 (1957). When it became clear that the informer's identity had not been previously disclosed, Judge Ward changed his ruling. (Tr. 114).

** Cf. *United States v. Russell*, 411 U.S. 423, 432 (1973); *United States v. Braver*, 450 F.2d 799, 805 (2d Cir. 1971), cert. denied, 405 U.S. 1064 (1972).

trial judge can hardly be said to have abused his discretion in balancing the competing policies and determining that disclosure should not be required. See *United States v. Alexander*, 495 F.2d 552 (2d Cir. 1974); *United States v. Ortega*, 471 F.2d 1350, 1357-58 (2d Cir. 1972), *cert. denied*, 411 U.S. 948 (1973); *United States v. Casiano*, 440 F.2d 1203, 1204-05 (2d Cir.), *cert. denied*, 404 U.S. 836 (1971); *United States v. Russ*, 362 F.2d 843, 845 (2d Cir.), *cert. denied*, 385 U.S. 923 (1966); *United States v. Coke*, 339 F.2d 183, 184 (2d Cir. 1964); *United States v. Simonetti*, 326 F.2d 614, 616 (2d Cir. 1964); *cf. United States v. De Angelis*, 490 F.2d 1004, 1010 (2d Cir.), *cert. denied*, 416 U.S. 956 (1974).

But Ansin does limit himself to arguments raised below. For the first time, he now claims that, because the informant was continuously in the company of Agent Alleva on November 13, 1973, he alone could be questioned about the accuracy of Alleva's testimony concerning the events of that date. This argument suffers not only Ansin's failure to present it to the Trial Judge and his efforts below to capitalize on the fact that the informant's identity had not been revealed,* but also from the fact that the informant was *not* the only person who could have been called in the hopes of undermining Alleva's testimony. For there is no indication in the record that codefendant Mario Garcia, a/k/a Mamua, who had previously pleaded guilty to charges contained in the indictment, was unavailable to testify, if called as a defense witness, to the conversations and transactions in El Reloj Bar.

But even assuming *arguendo* that this argument had been properly raised below and had a factual basis in the record, the trial judge could not have been said to have abused his discretion in withholding disclosure. First,

* See Tr. 865.

there is nothing in the record below or in Ansin's brief on appeal which in any way suggests any inaccuracy in Alleva's testimony about his initial transaction with Ansin, which, in any event, was a minor aspect of the totality of the Government's proof at trial. Second, there is nothing to suggest that, had the informant testified, he would have contradicted Alleva's testimony. Further, this plainly was not a case like *Roviaro v. United States*, *supra*, 353 U.S. at 64, where the informant was the "sole participant, other than the accused, in the transaction charged." The informant's involvement in this case began and ended on November 13, 1973. His active role ceased when he introduced Agent Alleva to Charles Schreier at Marchel's Diner in Queens. While he was later present during conversations among Alleva, Schreier and Ansin, and also when the group entered El Reloj Bar that evening, he was not in the men's room of the bar to witness the most critical event of the evening—appellant's sale to Agent Alleva of the first package of cocaine. This is simply not a case in which the informant is so "intricately involved in the transaction of this case" that disclosure is required. *United States v. D'Amato*, 493 F.2d 359, 366 (2d Cir.), *cert. denied*, 43 U.S.L.W. 3208 (Oct. 15, 1974); *see United States v. Soles*, *supra*, 482 F.2d 105; *United States v. Casiano*, *supra*, 440 F.2d 1203; *United States v. Russ*, *supra*, 362 F.2d 843; *United States v. Coke*, *supra*, 339 F.2d 183.

Moreover, this is not a case where the actions of the undercover agent could be corroborated only by the informant. A surveillance agent testified that he observed Agent Alleva enter Marchel's Diner on November 13th; meet with the informant, Charles Schreier, and a woman; leave the diner with Schreier, the woman, and the informant; drop the woman off; stop his car to let Schreier make a phone call; pick up the appellant at his home; drive to Broadway and 135th St. in Manhattan, where Mario Garcia entered Alleva's car; drive to 125th St.; enter and leave El Reloj Bar with Ansin, Garcia,

Schreier and the informant; return to 135th St. and Broadway, where Garcia and Ansin entered a gypsy cab registered to Jauregui; and finally return to headquarters with a package of cocaine. (Tr. 280-89). In this circumstance, the claim that the informant might "conceivably" provide testimony which was helpful to the defense is nothing more than sheer speculation. See *United States v. D'Amato*, *supra*, 493 F.2d at 366; *United States v. Soles*, *supra*, 482 F.2d 105; *United States v. Russ*, *supra*, 362 F.2d at 845; *United States v. Coke*, *supra*, 339 F.2d at 184-85; *United States v. Simonetti*, *supra*, 326 F.2d 614.

POINT II

Ansin's post-arrest statements were properly admitted in evidence at trial.

During the trial, outside the presence of the jury, Judge Ward conducted an evidentiary hearing on Ansin's motion to suppress his post-arrest statements. After the hearing, at which both Ansin and Special Agent John Dowd testified, Judge Ward denied the motion.* Appellant argues

* Judge Ward made the following findings:

"I find that the defendant was duly advised of his Constitutional Rights after his arrest and prior to being questioned by any agent of the government.

I find that there was no physical or mental coercion at the time the defendant was questioned by Assistant United States Attorney Batchelder at the United States Courthouse, nor was there any protracted interrogation, the interrogation apparently having lasted something less than an hour and a half.

I find that no direct governmental promise of immunity was given to obtain any statement from the defendant.

Considering the age, the mental and language ability of the defendant and his state of mind following his arrest, and continuing through his interrogation, I conclude that the defendant's will was not overborne at the time he made the statement which the government seeks to introduce and that the statements were voluntary.

Accordingly the defendant's motion to suppress is denied." (Tr. 472-73).

that, considering the totality of the circumstances, his post-arrest statements were involuntary and that the District Court erred in concluding otherwise. More particularly, Ansin contends that his statements were involuntary, because during questioning, he was subjected alternately to threats and promises of leniency and of freedom from prosecution; he was deprived of food and sleep and was forced to disrobe; he was not given an opportunity to call his girlfriend; and he was subjected to lengthy pre-arraignment interrogation and confinement. This argument is without merit.

Four agents of the Drug Enforcement Administration arrested Ansin in a park in front of his home in Fresh Meadows, Queens on February 20, 1974 at approximately 8:30 P.M. The agents promptly identified themselves, explained to Ansin that he was under arrest for violations of the narcotics laws and advised him of his constitutional rights. Ansin stated that he understood his rights. (Tr. 444-45).

Ansin was then driven to the New York Regional Office of the Drug Enforcement Administration. He was questioned briefly during the 45 minute ride. Upon arriving at the office, Ansin was searched, fingerprinted, photographed and questioned by two agents. Approximately, two hours after arriving at the office Ansin was taken to the Federal Detention Center at West Street where he was lodged overnight. (Tr. 415, 446-47, 457-58, 460-61, 515).

The following morning agents picked up Ansin at West Street at approximately 10:30 A.M. and brought him to the United States Courthouse, where Assistant United States Attorney Batchelder was assigned to prepare the necessary complaint and to conduct an interview. Ansin's

interview began at approximately 1:00 P.M.* He was again advised of his constitutional rights, gave statements, and at 2:00 P.M. was arraigned. (Tr. 430-31, 447-49).

Ansin testified at the hearing that shortly after his arrest he had been subjected to threatening language and was later told he would go to jail for 40 years. (Tr. 406-07, 423-24). He testified further that he was told that, if he cooperated, it would benefit him and that he might be released from jail. (Tr. 416, 425, 427). Agent Dowd testified that Ansin had not been threatened and had only been told that his cooperation with the Government would be helpful to him. He also testified that the Assistant United States Attorney who interviewed Ansin may have advised him of the possible penalty for the crime he had allegedly committed. (Tr. 459-60).

Given an opportunity to hear all of the testimony and assess the demeanor of the witnesses, Judge Ward found that Ansin had not been threatened and no promise of immunity from prosecution had been given in order to obtain a statement from him. See *United States v. Pomares*, 499 F.2d 1220, 1222 (2d Cir. 1974); cf. *United States v. Ferraya*, 377 F.2d 16 (2d Cir.), cert. denied, 389 U.S. 908 (1967).

Ansin's assertion that deprivation of food and sleep, as well as forced disrobement, overcome his will is equally baseless. Agent Dowd testified that, after Ansin had spent the night at West Street, he refused an offer of food (Tr. 457), see *United States ex rel. Coleman v. Mancusi*, 423 F.2d 985, 986 (2d Cir.), cert. denied, 400 U.S. 842 (1970); *United States ex rel. Ward v. Mancusi*, 414 F.2d 87, 89 (2d Cir. 1969), and Ansin himself testified that he was

* Agent Dowd testified that, because 14 or 15 arrests had been made in another narcotics case, Ansin had to wait for a period of time to be interviewed. (Tr. 461-62).

later given lunch at the United States Attorney's Office at about 1:00 P.M. (Tr. 430). As to lack of sleep, Judge Ward noted that the record failed to establish that Ansin had suffered any deprivation (Tr. 457), and no question has been raised about the fact that Ansin was given an opportunity to sleep at West Street. In addition, Agent Dowd testified that Ansin's disrobing at DEA Headquarters, the night before his interview at the United States Attorney's office, was part of a routine strip search. (Tr. 459-60). Ansin was without his trousers for only 5 to 10 minutes and never removed his shirt or underwear. (Tr. 411, 459-60). Ansin gave no statement while disrobed; indeed, he gave no statement until he was interviewed in the United States Attorney's office some 12 hours later.

Ansin further argues that he was subject to lengthy confinement and interrogation. However, Ansin was briefly questioned immediately after his arrest and was also questioned during the approximately 2 hours he spent at DEA Headquarters being routinely processed. Thereafter, he was not questioned again until 1:00 P.M. the next day when he was interviewed for less than an hour by the Assistant United States Attorney. (Tr. 461). Thus, even if it is assumed that Ansin was interrogated for the full duration of his stay at DEA headquarters, he was questioned for only a little over 3 hours. This is hardly prolonged interrogation. See *United States ex rel. Stanbridge v. Zelker*, slip op. 2905, at 2916 (2d Cir. April 15, 1975); *United States ex rel. Coleman v. Mancusi*, *supra*, 423 F.2d 985.

Moreover, it is clear that no unreasonable delay occurred prior to Ansin's arraignment and that the period of delay which was in fact experienced was in no way improperly exploited to elicit an involuntary confession. The routine questioning in the United States Attorney's office prior to arraignment after overnight detention was limited in duration and in conformity with procedures approved by this Court. *United States v. Marrero*, 450 F.2d 373 (2d Cir. 1971), *cert. denied*, 405 U.S. 933 (1972); see

United States v. Ortega, *supra*, 471 F.2d at 1362; *United States v. Collins*, 462 F.2d 792 (2d Cir. 1973), *cert. denied*, 409 U.S. 988 (1972); *cf. United States v. Barrera*, 486 F.2d 333, 338 (2d Cir. 1973), *cert. denied*, 416 U.S. 940 (1974); *United States v. Ramirez*, 482 F.2d 807, 815-16 (2d Cir.), *cert. denied*, 414 U.S. 1070 (1973).*

Considering the totality of the circumstances, Judge Ward did not err in determining that Ansin's post-arrest statements were given voluntarily.**

* Ansin also argues that he was not permitted to call his girlfriend, though the record is not clear how many times and where he was when he requested to make a call. (See Tr. 408-09, 418-19). He apparently requested the agents to make a call for him almost immediately after his arrest, and while he was still outdoors, but he was uncertain whether he gave them the correct phone number. (Tr. 409, 419, 521). Agent Dowd testified during the trial that he could not recall whether he had or had not called Ansin's girlfriend. (Tr. 528-29). There is no indication in the record that Ansin ever requested an opportunity to call an attorney.

** This is not a case in which the defendant was of low intelligence. Ansin testified that, before leaving Spain in the 1960's, he had been a teacher. (Tr. 424). Moreover, his facility with the English language was demonstrated by the fact that he did not require the services of an interpreter during the trial.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Lawrence B. Belovitz; being duly sworn,
deposes and says that he is employed in the office of
the United States Attorney for the Southern District
of New York.

That on the 4th day of June 1975
he served 2 copies of the within brief by placing the
same in a properly postpaid franked envelope addressed:

Kenneth Kaplan
919 3rd Ave
NY, N.Y. 10022

And deponent further says that he sealed the said en-
velope and placed the same in the mail drop for mailing
at the United States Courthouse, Foley Square, Borough
of Manhattan, City of New York.

Lawrence B. Belovitz

Sworn to before me this

4th day of June 1975

Gloria Calabrese

GLORIA CALABRESE
Notary Public, State of New York
No. 24-0535340
Qualified in Kings County
Commission Expires March 30, 1977

